

**54<sup>TH</sup> MEETING**  
**OF THE**  
**MARYLAND HEALTH CARE COMMISSION**

**Friday, March 19, 2004**  
**Minutes**

Chairman Wilson called the meeting to order at 1:05 p.m.

Commissioners present: Chase, Crofoot, Malouf, Moffit, Nicolay, Risher, Row, Salamon, and Toulson

**ITEM 1.**

**Approval of Minutes**

Commissioner Ernest Crofoot made a motion to approve the Minutes of the February meeting of the Commission, which was seconded by Commissioner Clifton Toulson, Jr., and unanimously approved.

**ITEM 2.**

**Update on Commission Activities**

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

Chairman Wilson asked if the Deputy Directors had information to add to the written *Update*. Commissioner Stephen J. Salamon asked Ben Steffen, Deputy Director of Data Systems and Analysis, to update the Commissioners on the status of activities regarding the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Following discussion, Commissioner Salamon commended the Commission staff on the quality of educational services it provides regarding HIPAA. Copies of the *Update* were available on the documents table and on the Commission's website at:

<http://www.mhcc.state.md.us/mhccinfo/cmsnmtgs/updates/>.

### ITEM 3.

#### **CERTIFICATION OF ELECTRONIC HEALTH NETWORK:**

- Health Data Management Corporation
- Passport Health Communications, Inc.

Chairman Wilson indicated that David Sharp, Chief of the Division of EDI Programs and Payer Information Systems, would present information on this item. Dr. Sharp briefly described the Health Data Management's location and business practices. He said that the corporation requested recertification as an electronic health network and that staff recommended recertification. This is Health Data Management Corporation's second renewal. Commissioner Constance Row made a motion that the Commission approve the staff recommendation, which was seconded by Commissioner Toulson, and unanimously approved.

#### **CERTIFICATION OF ELECTRONIC HEALTH NETWORK: Health Data Management Corporation is hereby APPROVED.**

Dr. Sharp then described the status of Passport Health Communications, Inc. Commissioner Row made a motion that the Commission approve the staff recommendation, which was seconded by Commissioner Crofoot, and unanimously approved.

#### **CERTIFICATION OF ELECTRONIC HEALTH NETWORK: Passport Health Communications, Inc. is hereby APPROVED.**

### ITEM 4.

#### **EMERGENCY AND PROPOSED ACTION: COMAR 31.11.06 — Comprehensive Standard Health Benefit Plan (HSA-Compatible High Deductible Health Plan)**

Chairman Wilson said that due to certain requirements pertaining to Health Savings Accounts included in the recently enacted federal Medicare Modernization Act, changes to the CSHBP are needed so that the Plan will meet the definition of a high-deductible health plan under that Act. Enrique Martinez-Vidal, Deputy Director of Performance and Benefits, discussed the proposed changes to the regulations for emergency and proposed action. New federal guidelines were in the process of being written as of the day of the meeting. In order to expedite the promulgation of the Commission's new proposed regulations so that they will comply with the requirements of the new federal law and subsequent new federal guidelines and regulations, the staff would send the new regulations via email to the Commissioners as soon as the new federal guidelines were available. If necessary, a meeting via teleconference would be held to discuss the regulations. No action was taken.

### ITEM 5.

#### **FINAL ACTION: COMAR 10.24.10 — State Health Plan for Facilities and Services: Acute Inpatient Services – Revisions to the Acute Care Bed Need Methodology and 2010 Bed Need Forecast**

Chairman Wilson announced that at the October 30, 2003 meeting, the Commission released a Working Paper with recommended changes to the acute care hospital bed need projection methodology and a 2010 bed need forecast for the medical-surgical-gynecology-addiction (MSGA) and pediatric services bed categories for informal public comment. Paul Parker, Health Policy Analyst, and Joel Tornari, Assistant Attorney General presented a summary of the changes to the regulations for final approval. Mr. Parker said that the bed need projections, which are part of *COMAR 10.24.10 State Health Plan for Facilities and Services: Acute Inpatient Services*, are intended to guide Certificate of Need decisions made by the

Commission on the need for new and expanded hospital capacity. Following analysis of the informal comments, staff recommended and the Commission adopted the proposed revisions to the acute care bed need methodology and the 2010 bed need forecast for MSGA and pediatric services, with several modifications, both as proposed and emergency regulations. (The Administrative, Executive, and Legislative Review (AELR) Committee of the Maryland General Assembly did not act to give the regulations an immediate effective date.)

Following publication as proposed regulations, the Commission held a public hearing on February 3, 2004 to receive additional public comment. Two written comments were received by the Commission prior to the close of the formal public comment period on February 24, 2004. Staff reviewed and analyzed the public comments and recommended that the Commission adopt the proposed revisions to the acute care bed need methodology and the 2010 bed need forecast for MSGA and pediatric services with no changes. Because the Commission now has a number of Certificate of Need applications from acute care hospitals pending review that involve expansion of existing bed capacity, approval would enable the Commission to review and take timely action on pending Certificate of Need applications based on an updated forecast of future bed need. Following discussion among the Commissioners, Mr. Parker, and Mr. Tornari, Vice Chairman Malouf made a motion that the Commission approve the regulations, which was seconded by Commissioner Robert Nicolay, and unanimously approved.

**FINAL ACTION: COMAR 10.24.10 — State Health Plan for Facilities and Services: Acute Inpatient Services – Revisions to the Acute Care Bed Need Methodology and 2010 Bed Need Forecast is hereby APPROVED.**

#### **ITEM 6.**

**PRESENTATION:** *Practitioner Utilization: Trends Within Privately Insured Patients, 2001–2002*

Chairman Wilson said that this report is mandated by the MHCC's enabling statute. It examines trends in payment to physicians and other health care practitioners for care provided to privately insured Maryland residents under age 65. Ben Steffen and Dr. Chris Hogan of Direct Research, LLC, the principal author, presented a summary of highlights from this year's report. Mr. Steffen said that the analyses are based on the health care claims and encounter data that private health insurance plans serving Maryland residents submit annually to the Commission as part of the Medical Care Data Base. A key objective of this report is to attempt to quantify the increase in professional services used by non-elderly privately insured Maryland residents. Dr. Hogan described the goals of the analysis performed, the data, and methods used. He summarized some of the report's conclusions, including:

- Growth in volume of care continued near the recent trend rate, led by persistent rapid growth in imaging services.
- Fees began rising, on average, in 2002 and continued in 2003. This contrasts with flat-to-declining fees in 2001 and earlier.
- Maryland fees are relatively low (they fall in about the 25<sup>th</sup> percentile of states) likely due to high physician supply and managed-care penetration.
- There is relatively little difference between HMO and non-HMO average fees, but the gap is largest in the National Capital Area.
- HMO compliance with the 125% threshold was unchanged for the period 2000-2002. Total dollars involved in non-compliance appear to be small.
- In the CSHBP, the out-of-pocket share of costs falls between the level calculated for group-purchase and individual-purchase products.

The Commissioners asked Dr. Hogan a number of questions regarding the data and conclusions. Chairman Wilson observed that while all diagnostic tests have an impact on practitioner utilization and fees, the rise in imaging services is due, in part, to the fact that imaging is the most precise and least invasive diagnostic tool available to practitioners. He thanked Dr. Hogan and Mr. Steffen for the presentation of the report.

#### **ITEM 7.**

#### **LEGISLATIVE REPORT**

The next agenda item was the Legislative Report. Chairman Wilson said that there were less than thirty days remaining in this year's session of the Maryland General Assembly. Kristin Helfer Koester, Chief of Legislative and Special Projects, reviewed the legislative activities of the previous month for the Commissioners.

#### **ITEM 8.**

#### **8. ACTION: CERTIFICATE OF NEED (CON):**

- Johns Hopkins Hospital — Exterior Restoration of Historic Buildings and Infrastructure Upgrades, Docket No. 03-23-2119
- Holy Cross Hospital — Modification of Previously Approved CON, Docket No. 00-15-2076
- University Specialty Hospital — Permanent Closure of Previously Delicensed Comprehensive Care Facility , Docket No. 03-24-2121

Chairman Wilson announced that there were three items relating to Certificate of Need approval. Susan Panek, Chief, Certificate of Need, would present an exterior restoration project of historic buildings and infrastructure upgrades requested by Johns Hopkins Hospital.

- Johns Hopkins Hospital — Exterior Restoration of Historic Buildings and Infrastructure Upgrades, Docket No. 03-23-2119

Ms. Panek said that the Johns Hopkins Health System has submitted for Commission review and approval an application for Certificate of Need ("CON") to undertake a capital expenditure of \$25,324,978 related to a two-part project for The Johns Hopkins Hospital: the exterior restoration of four historic buildings on the campus, and rehabilitation and upgrades to key infrastructure elements located in the hospital's existing power plant. As Johns Hopkins explained in its letter of intent to seek Certificate of Need approval for these expenditures, these projects do not affect the institution's health care services; however, the System has concluded that the exterior restorations are necessary "to preserve the useful life" of the four historic buildings, and that the power plant upgrades are needed to "ensure the reliability of the generation of steam power, chilled water, and emergency power" for the safe and efficient operation of the hospital.

The historic preservation component of the proposed project involves three adjoining buildings—Billings, Wilmer, and Marburg—and the Phipps Building. The three adjoining buildings were opened for use in 1889 and, in 1975, were added to the National Register of Historic Places. They are used for administrative functions, but also, in the case of Wilmer and Marburg, house patient care services. Much of the Johns Hopkins central administration (including the departments of nursing, finance, and legal) is located in the Billings Building. Johns Hopkins projects the restoration and repair costs of the three Broadway building exteriors at \$5,776,000 and the Phipps exterior at \$6,128,000. Staff recommended that the Commission

approve the application by the Johns Hopkins Health System for an expenditure of \$25,324,978 for the exterior restoration of the Billings, Marburg, Wilmer, and Phipps Buildings, and for the specified upgrades and improvements to the heating, cooling, and electrical power capabilities of its existing power plant. Ms. Panek introduced Patty Brown, Sandra Mann, and Howard Reel, to the Commissioners. Commissioner Crofoot made a motion to approve the CON, which was seconded by Commissioner Nicolay, and unanimously approved.

**ACTION: Johns Hopkins Hospital — Exterior Restoration of Historic Buildings and Infrastructure Upgrades, Docket No. 03-23-2119, is hereby APPROVED.**

Chairman Wilson said that Patricia Cameron, Chief of Acute and Ambulatory Care, would present a request from Holy Cross Hospital for a modification of a previously approved CON for a \$66 million construction and renovation project at the hospital.

- Holy Cross Hospital — Modification of Previously Approved CON, Docket No. 00-15-2076

Ms. Cameron said that the Commission granted a Certificate of Need (“CON”) on May 17, 2001 to Holy Cross Hospital (“Holy Cross” or “the hospital”) for a \$66 million construction and renovation project at the hospital. This project involves several components of new construction and renovation to be completed in phases over more than four years, beginning in 2001 and ending in 2005. The approved project included two new floors added to the current east tower for relocated patient care space, relocation and expansion of its Emergency Department, and construction of physician office space in a new six-story structure on the east end of the existing hospital, reconfiguration and expansion of space for NICU, obstetrics, and other women’s services, a new front to the hospital for patient flow and ancillary services, and reconfiguration and expansion of space for outpatient services. No new services were initiated as part of its project, and no additional beds were requested.

In December of 2003, Holy Cross submitted a request to modify its Certificate of Need to permit capital cost increases to \$86.9 million, changes in the financing mechanism, and significant changes in physical plant design, even though the majority of the requested modifications had already been implemented. The design changes include elimination of new space for the NICU, rearranging the locations of the NICU and other perinatal services, changes to the location of the new Emergency Department, construction of a new surgical intensive care unit (ICU) in the space where the emergency department was intended, and rearranging the locations of other outpatient services. Holy Cross represented that the design changes, and subsequent changes in the project budget and financing mechanisms, were necessitated by significant cost increases as the several phases of the project moved from the programmatic/concept level of detail, through the design level, and finally to the construction level detail.

COMAR 10.24.01.17B requires Commission approval of proposed modifications before the changes are implemented. The hospital neither notified the Commission of the modifications, nor sought its approval, until the significant design changes of the first two phases of the project were nearly fully implemented.

Although the hospital did not notify the Commission in advance of proposed changes to the approved project, and timely seek the required Commission approval to make them, the changes made by the hospital to its Certificate of Need-approved project are permissible as modifications under the applicable regulations. Staff recommended that the Commission approve the requested modifications to the Certificate of Need because of the construction status of the project. Ms. Cameron introduced Kevin Sexton, President of Holy Cross Hospital, and Annice Cody, Vice President, Planning and Development, Gary Vogen, Chief Financial Officer, and Neil McKelvey, Senior Vice President, to the Commissioners.

The Commissioners expressed their displeasure with Holy Cross for the delay in notification, and asked Mr. Sexton to explain why they should approve the project's modifications after the hospital violated the terms of its previously-approved CON. Mr. Sexton answered their questions and explained the reasons for the construction delays and cost increases. Vice Chairman Malouf made a motion that the Commission approve the modifications to the CON, with a requirement for detailed, monthly status reports from the hospital, which was seconded by Commissioner Constance Row, and unanimously approved. Further, staff was directed to continue to educate hospitals about the laws and regulations regarding Certificates of Need.

**ACTION: Holy Cross Hospital — Modification of Previously Approved CON, Docket No. 00-15-2076, is hereby APPROVED with a requirement for detailed, monthly status reports to the Commission.**

Chairman Wilson said that Ms. Panek would next present a request from University Specialty Hospital requesting an exemption for permanent closure of a previously delicensed comprehensive care facility. Chairman Wilson recused himself from consideration of this matter. Vice Chairman Malouf presided over the remainder of the meeting.

- University Specialty Hospital — Permanent Closure of Previously Delicensed Comprehensive Care Facility , Docket No. 03-24-2121

Ms. Panek said that the University Specialty Hospital, a component of the University of Maryland Medical System ("UMMS"), formerly known as Deaton Specialty Hospital and Home ("Deaton"), located at 601 South Charles Street in Baltimore City, has requested Commission approval of the CON required to permanently close the nursing home component of this facility. On June 13, 2001, Deaton notified the Commission that it would close its nursing facility, and requested that the Commission permit the temporary delicensure of its 194 CCF beds, to permit UMMS to consider the options for reimplementation or sale and relocation the bed capacity as provided in the applicable Commission regulations. Simultaneously, Deaton notified the Office of Health Care Quality and the local Office on Aging that it would begin the prescribed procedures for closing a nursing home, including notifying residents and families, and identifying alternative placements. On August 5, 2001, Deaton completed the transfer of its last resident to other facilities.

For the next sixteen months, UMMS initially maintained all 194, and then a remaining 80, of its nursing home beds in good standing through the temporary delicensure regulations, while the System leadership grappled with whether to resume operating the smaller bed comprehensive care facility (CCF) bed complement as specialty-area nursing units. Finally, in October 2002, University Specialty Hospital notified the Commission that it would abandon the remaining 80 Deaton beds. Commission staff responded on November 14, 2002 that – as it had previously indicated at the time Deaton closed and surrendered its license, and also following the October 2002 notice letter – the permanent closure of the entire Deaton facility would require action by the Commission on a Certificate of Need application, as required under Commission statute at Health-General §19-120(j) (2) (iii) 1., *Annotated Code of Maryland*. UMMS submitted its Certificate of Need application on September 26, 2003. Staff recommended that the Commission approve University Specialty Hospital's application for Certificate of Need necessary for the closure of its 194-bed comprehensive care facility in Baltimore City. Ms. Panek introduced James Warner and Paul Kayola of UMMS to the Commissioners. Commissioner Crofoot made a motion that the Commission approve the CON for the closure of the 194-bed comprehensive care facility, which was seconded by Commissioner Chase, and unanimously approved.

**ACTION: University Specialty Hospital — Permanent Closure of Previously Delicensed Comprehensive Care Facility, Docket No. 03-24-2121, is hereby APPROVED.**

**ITEM 9.**

**Hearing and Meeting Schedule**

Vice Chairman Malouf said that the next scheduled meeting of the Maryland Health Care Commission would be on Thursday, April 15, 2004 at 4160 Patterson Avenue, Room 100, in Baltimore, Maryland at 1:00 p.m.

**ITEM 10.**

**Adjournment**

There being no further business, the meeting was adjourned at 3:14 p.m. upon motion of Commissioner Moffit, which was seconded by Commissioner Salamon, and unanimously approved by the Commissioners.